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Federal Communications Commission
Office of the Secretary

November 21, 1991

BY HAND DELIVERY

Donna R. Searcy, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: MM Docket No. 91-221
Review of the Policy Implications
of the Changing Video Marketplace

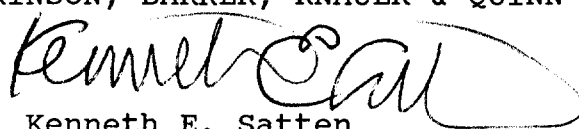
Dear Ms. Searcy:

We hand you herewith, on behalf of Bonneville International Corporation, an original and nine copies of its Comments in response to the Notice of Inquiry in the above-referenced proceeding.

If you have any questions concerning this submission, kindly contact the undersigned.

Sincerely,

WILKINSON, BARKER, KNAUER & QUINN


By: Kenneth E. Satten

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
) MM Docket No. 91-221
Review of the Policy Implications)
of the Changing Video Marketplace)

COMMENTS OF
BONNEVILLE INTERNATIONAL CORPORATION

Bonneville International Corporation ("Bonneville") respectfully submits these comments in response to the above-captioned Notice of Inquiry.^{1/} In this proceeding, the Commission seeks comments on developments in the video marketplace and requests suggestions on rule changes affecting television. As explained more fully herein, Bonneville believes that regulatory revisions are necessary to enable existing television stations to continue to provide high quality service to the public in today's rapidly evolving technological environment.^{2/}

I. Introduction

It is well recognized that over the past two decades, there has been a dramatic proliferation of media sources.^{3/} The

^{1/} In the Matter of Review of the Policy Implications of the Changing Video Marketplace, MM Docket No. 91-221, Notice of Inquiry, 6 F.C.C. Rcd. 4961 (1991) ("Notice").

^{2/} Bonneville is the operator of television stations KSL-TV, Salt Lake City, Utah and KIRO-TV, Seattle, Washington.

^{3/} See, e.g., Office of Plans and Policy Working Paper #26, Broadcast Television in a Multichannel Marketplace, DA 91-817, 6 F.C.C. Rcd. 3996, 4009 (1991); In re Revision of Radio Rules and Policies, MM Docket No. 91-140, Notice of Proposed Rule Making, 6 F.C.C. Rcd. 3275, 3275-76 (1991).

substantial growth in video services has brought a vast array of program choices to the American public and at the same time has created significant competition in the video marketplace. With the continuing emergence of new technologies, the outlook for the future is more services and more competition.

In addition, as discussed in the Notice, television broadcasters are now competing with video providers who have multichannel capacity and dual revenue streams. Cable, DBS, possible telephone company delivery of programming -- all offer the capability for one entity to deliver multiple channels and derive both advertiser and consumer sources of revenue.

Given these circumstances, questions are raised in this proceeding as to the viability of localism and free over-the-air television in the future. There is little doubt that increased competition for advertising revenues can impact on programming -- particularly local programming. Similarly, the American public faces the prospect of much, if not all, programming that is now being provided for free (such as sports), being available only on a pay basis. The development of video "haves" and video "have nots" is not inconceivable.

The FCC alone cannot preserve free TV and localism. However, the FCC should insure that its regulatory approach does not artificially restrict broadcasters' efforts to develop dual revenue streams and some multichannel capacity. With this as background, Bonneville offers the following for Commission consideration.

II. Retransmission Consent

Perhaps the most significant and immediate development that could permit local television stations to compete more effectively in the video marketplace would be the introduction of retransmission consent. The cable industry has been the long-term beneficiary of a system that permits cable systems to retransmit the signals of television stations without their consent or compensation. The result is that broadcasters directly compete with cable systems who utilize much of the broadcasters' product.

In today's competitive video marketplace, the inherent inequities of this system must be addressed. Congress is now considering legislation that will eliminate these inequities by providing broadcasters with the ability to control the retransmission of their signals. ^{4/}

The Commission should fully embrace the concept of retransmission consent and should actively support the passage of such legislation. In addition, should legislation be passed adopting retransmission consent provisions, the Commission should expedite any proceedings undertaken for implementation of the legislation.

III. Revision of the Multiple Ownership Rules

The Commission's present ownership rules severely restrict national, local, and cross-ownership of radio and

^{4/} See S.12, 102d Cong., 1st Sess. (1991) and H.R. 3380, 102d Cong., 1st Sess. (1991).

television stations. The Commission is now engaged in a rulemaking proceeding where it is examining its rules and policies regarding common ownership of radio stations and joint ventures among noncommonly owned radio stations.^{5/} It has proposed to allow "a larger assemblage of stations by individual owners" in order to permit radio broadcasters to compete more effectively. Bonneville believes the Commission should utilize the radio rulemaking proceeding as a model for the television service and look toward relaxation of the ownership restrictions applicable to television.

The Commission's present national ownership rule generally permits a single group to own 12 television stations with a national audience reach of 25 percent.^{6/} It has been some seven years since the Commission undertook limited relaxation of the national ownership restrictions.^{7/} Today, with the ongoing rapid development of new technologies and the dramatic growth in the number of media outlets, the case for elimination of the national ownership restrictions is compelling. Moreover, such restrictions unfairly place broadcasters at a competitive disadvantage vis-a-vis competing multiple channel providers.

^{5/} In re Revision of Radio Rules and Policies, MM Docket No. 91-140, Notice of Proposed Rule Making, 6 F.C.C. Rcd. 3275 (1991).

^{6/} 47 C.F.R. § 73.3555.

^{7/} In the Matter of Amendment of Section 73.3555 of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations, Gen. Docket No. 83-1009, 100 F.C.C. 2d 17 (1984), recon. granted, 100 F.C.C. 2d 74 (1985).

Accordingly, Bonneville believes that total elimination of the national ownership limits is appropriate. At a minimum, as an alternative, Bonneville proposes that the 12 station limit be increased first to 18 stations and then to 24 stations after three years, with the national audience cap being raised from the existing 25 percent to 30 percent now, and then to 35 percent after three years.

Bonneville also advocates limited relaxation of the Commission's duopoly rule to permit increased common ownership within markets. Such common ownership would permit economies of scale, allow co-location of facilities, and facilitate joint advertising sales, cooperative production, and group purchases of programs. Specifically, a revised duopoly rule should permit one entity to own two commercial television stations in one market. Once the Commission and the industry gain experience with the new requirements, additional deregulation may prove appropriate.

Bonneville also favors relaxation of the radio/television and radio/television/newspaper cross-ownership prohibitions. Combined ownership in this area would enhance the ability of television stations to compete in the video marketplace of the future by permitting joint operations with radio and newspaper entities. Bonneville recognizes that restrictions placed on the Commission by Congress in appropriations legislation limit the Commission's ability to undertake a proceeding to eliminate the

newspaper restrictions.^{8/} However, the Commission should work with the Congress to eliminate this Congressional limitation so that an appropriate proceeding can be instituted. In any event, the Commission should give consideration to utilization of a liberal waiver policy in this area whereby the Commission would consider requests for waiver of the newspaper cross-ownership prohibition. Permitting television broadcasters to own newspaper and/or radio properties in their markets may be of particular assistance to television stations as they attempt to compete with multiple channel video providers in today's video environment.

Finally, in the operations area, Bonneville supports the concept of joint ventures among television stations (including appropriate use of local market affiliations or time brokerage agreements). Such arrangements would permit noncommonly owned stations to cooperate in advertising sales, technical facilities, and programming and would be particularly beneficial to struggling stations. Bonneville submits that such affiliations serve the public interest so long as the licensee meets its responsibilities under the Communications Act and Commission rules and policies and continues to maintain control over its station. The Commission and Congress should focus not on whether such arrangements are contrary to the public interest, but rather on whether they are implemented in accordance with Commission policies respecting licensee control and responsibility. More-

^{8/} Departments of Commerce, Justice and State, the Judiciary and Related Agencies Appropriations Act, 1992, Pub. L. No. 102-140, 105 Stat. 782 (1991).

over, Bonneville believes that the Commission is fully capable of "policing" such arrangements to ensure they are implemented consistent with the public interest.

IV. Technological Enhancements

As we proceed into the 1990s, the Commission should also insure that its regulations do not restrain broadcasters' use of new technologies. For example, significant developments are occurring with regard to video compression that may provide broadcasters with new opportunities. If video compression ultimately permits broadcasters to deliver more than one program service on an assigned channel, then the Commission should provide broadcasters with flexibility in the use of that channel. Thus, a broadcaster should be permitted to satisfy its statutory obligation (i.e., political broadcasting, children's programming, issue responsive programming) through one of its program services, leaving it with the option to use excess capacity for other services. Similarly a broadcaster should be able to use video compression in connection with common ownership or joint venturing to achieve a type of multichannel service which will permit additional revenue streams and economies of scale.

Interactive technologies may also provide television broadcasters with opportunities. Bonneville supports the expansion of such technologies so long as they do not compromise technological integrity or foreclose opportunities for HDTV. In this regard, HDTV, while the subject of a separate Commission proceeding, should be implemented with minimum regulatory

requirements. Technology will continue to drive the business and regulatory agenda, and broadcasters must be permitted to participate in new technological developments, free from unnecessary regulation.

V. Programming

Bonneville also believes that, subject to statutory limitations, the Commission should review any remaining programming restrictions to determine whether they are still valid. Regrettably, the Commission has already missed the opportunity to eliminate its financial interest and syndication rules.

An example of a rule ripe for evaluation is the Commission's prime time access rule. Bonneville's television stations have had business and programming judgments compromised by PTAR. In Bonneville's view, the PTAR rule -- particularly its off-network component -- cannot continue to be justified in today's video marketplace. Requests to initiate a proceeding to evaluate its continued validity remain ignored by the Commission. The FCC should initiate a proceeding to revisit the rule so that interested parties -- those in favor of the rule and those opposed to the rule -- can provide the Commission with comments.

As a final matter, it has been suggested that any deregulation in this proceeding should be accompanied by a reevaluation of earlier deregulatory actions in the programming area, such as elimination of the Fairness Doctrine and formal ascertainment requirements. Bonneville strongly opposes such an approach. The focus of this proceeding should be to eliminate

unnecessary regulatory obstacles that compromise broadcasters' ability to compete in a changing video marketplace -- not to resurrect old regulatory barriers.

Conclusion

Television broadcasters face many challenges in the years ahead, and the future of free television and localism -- hallmarks of our broadcast history -- is uncertain. The Commission can insure that its rules -- in areas such as ownership, technology, and programming -- do not prevent television broadcasters from continuing to provide the high quality public service that they do today.

Respectfully submitted,

BONNEVILLE INTERNATIONAL CORPORATION

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Dated: November 21, 1991